

The Honorable RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

BACKPAGE.COM, LLC, and  
THE INTERNET ARCHIVE

Plaintiffs,

v.

ROBERT M. MCKENNA, Attorney  
General of Washington State, et al,

Defendants.

NO. 2:12-cv-00954-RSM

DECLARATION OF  
REBECCA HARTSOCK

I, Rebecca Hartsock, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am over the age of eighteen and am a resident of the state of Washington.
2. I am a Computer Investigative Specialist with the Washington State Attorney General's Office Consumer Protection Division. I focus on Internet-related investigations, and am a trained computer forensics investigator. On June 18, 2012, I visited several websites that offer adult services in the state of Washington. I attempted to post an advertisement for female escort services and documented the process required at each site.

**Signing up for Escort Ads on Various Websites**

**[www.escortdater.com](http://www.escortdater.com)**

3. The first thing I saw upon visiting [www.escortdater.com](http://www.escortdater.com) was a notification that I must

1 be 18 years or older to browse the site. In order to confirm my age, I simply had to  
 2 click an enter button with the text "I am over 18." There was a disclaimer immediately  
 3 above this button with the text "By clicking ENTER, you confirm you've read and  
 4 agree with our terms of use, otherwise please EXIT the site." (See Exhibit 1, Figure 1)

5 4. The next page seen was a list of different states with available escort advertisements. A  
 6 list of cities followed by the number of ads was directly below each state. I quickly  
 7 located Washington and clicked on Seattle. (See Exhibit 1, Figure 2)

8 5. The next page included choices such as Adult Personals, Adult Services, Adult Jobs,  
 9 Adult Website Services, and Adult Businesses for Sale. I selected Female Escorts  
 10 under the heading of Adult Services. (See Exhibit 1, Figure 3)

11 6. I could then see a list of advertisements that had been placed in that section. The first  
 12 ones listed had been placed on Monday, June 18, 2012. I noticed a button at the top  
 13 right corner of the page with the text "Post an Ad No fee, it's FREE!" I clicked the  
 14 button. (See Exhibit 1, Figure 4)

15 7. The form to use to post an advertisement was directly below a list of posting rules.  
 16 Three rules were highlighted in yellow. These rules required that I not post any  
 17 material on the Site that exploits minors in any way; that I not post any material on the  
 18 Site that in any way constitutes or assists in human trafficking; and that I am at least 18  
 19 years of age or older and not considered to be a minor in my state of residence.  
 20 Directly underneath these rules, the following text was displayed in red: "Any post  
 21 exploiting a minor in any way will be subject to criminal prosecution and will be  
 22 reported to the Cybertipline. The poster will be caught and the police will prosecute the  
 23 poster to the full extent of the law." (See Exhibit 1, Figure 5)

24 8. The mechanism for posting an advertisement on the site allowed me to upload a picture  
 25 from my computer that would be included in the advertisement. In order to locate a  
 26 picture that I could post, I opened a new browser window and used Google to search

1 for an image of candy. I downloaded and saved to my computer the first picture shown  
 2 in the search results, which happened to be a picture of M&M's®. (See Exhibit 1,  
 3 Figure 6)

4 9. In addition to the mechanism allowing me to upload a picture from my computer, the  
 5 site also contained a form in which I was required to type the text for the advertisement  
 6 I sought to post. I entered "Sweet as Candy, Come Play with ME" on the form for the  
 7 title and Seattle, WA for the location. I entered "I'm a sweet young thing and you won't  
 8 be disappointed. Incall only. (206) 555-9654" for the body of the advertisement. (See  
 9 Exhibit 1, Figure 7)

10 10. I scrolled down the page to continue entering the details of my advertisement. I used  
 11 petalpusher11@gmail.com as an email contact address. I used the browse button to  
 12 locate the candy picture I had downloaded to the computer desktop and uploaded it to  
 13 the site for posting. I then entered a security code shown via a skewed graphic, also  
 14 known as a CAPTCHA, checked the box to indicate I agreed to the terms of use, and  
 15 clicked the Post Now button. (See Exhibit 1, Figure 8)

16 11. I checked the email account I entered when posting the ad and saw there was an email  
 17 from publisher@escortdater.com. I needed to click a link in the email to publish my  
 18 advertisement. I clicked the link. (See Exhibit 1, Figure 9)

19 12. I was then taken to the page at www.escortdater.com where I could see my completed  
 20 advertisement published on the site. (See Exhibit 1, Figure 10)

21 **www.myproviderguide.com**

22 13. I visited www.myproviderguide.com. (See Exhibit 2, Figure 1)

23 14. There was a list of locations on the left side of the opening page from which I could  
 24 choose to place my advertisement. I scrolled down, located Washington, and clicked  
 25 Seattle. (See Exhibit 2, Figure 2)

26 15. I was taken to the page for Seattle escort ads at

1 www.myproviderguide.com/escorts/seattle. The latest Seattle escort free posts were  
 2 shown. I saw a link to Create Post at the top of the page and clicked it. (See Exhibit 2,  
 3 Figure 3)

4 16. I was taken to www.myproviderguide.com/page/poststeps.html. (See Exhibit 2, Figure  
 5 4)

6 17. I filled out the form and entered Washington for the state, Seattle for the city, and  
 7 selected Female Escort for the category. I used "Sweet as Candy, Come Play with ME"  
 8 for the title and "I'm a sweet young thing and you won't be disappointed. Incall only."  
 9 for the body of the advertisement. (See Exhibit 2, Figure 4)

10 18. I used the Browse button to navigate to the saved picture of candy on my computer's  
 11 desktop to upload it with my advertisement and entered a fake phone number of 206-  
 12 555-9654. (See Exhibit 2, Figure 5)

13 19. I scrolled down to the bottom of the page where I had to solve a simple math problem  
 14 in order to verify that my actions were generated by a person rather than an automated  
 15 computer mechanism. I then clicked the Submit Post button. (See Exhibit 2, Figure 6)

16 20. In order to post my free advertisement, I had to create an account. I used  
 17 summeadows@gmail.com for the email address and selected SumMeadows as my  
 18 screen name. I selected a password and entered it twice as prompted. I then clicked the  
 19 Create Account button. (See Exhibit 2, Figure 7)

20 21. The top of the page then showed "Your account has been successfully created!"  
 21 Directly below this text there were instructions to open the account activation email  
 22 that was sent to summeadows@gmail.com. (See Exhibit 2, Figure 8)

23 22. I logged into the email account and found the account activation email. I clicked on the  
 24 link provided in the email in order to verify my account. (See Exhibit 2, Figure 9)

25 23. My account was successfully verified. (See Exhibit 2, Figure 10)

26 24. I logged into my new account using my email address and password and could see the

1 title of the advertisement I had created. I clicked the button to the right of the ad title  
2 with the label "Make Online." (See Exhibit 2, Figure 11)

3 25. I then visited the site, and found that the advertisement I had submitted was now online.  
4 (See Exhibit 2, Figure 12)

5 **www.erosads.com**

6 26. I visited www.erosads.com. (See Exhibit 3, Figure 1)

7 27. I clicked the button labeled "Set up your account today!" to register to post an  
8 advertisement. I entered Summer as my name and SumMeadows@gmail.com as my  
9 email address. I entered a fake phone number of 206-555-9654, selected Washington  
10 for my state, entered a password, and set up "Favorite stuffed animal or pet?" with an  
11 answer of "dog" as my security question. I then clicked the Submit button. (See  
12 Exhibit 3, Figure 2)

13 28. My password did not meet their requirements. I was prompted to enter another one that  
14 had at least one number. I selected a different password and clicked the Submit button  
15 again. (See Exhibit 3, Figure 3)

16 29. The registration page at www.erosads.com/account/register showed that my registration  
17 was successful. I was instructed to check my email for an account activation link. (See  
18 Exhibit 3, Figure 4)

19 30. I located the account activation email in the inbox for SumMeadows@gmail.com and  
20 clicked on the activation link that was provided. (See Exhibit 3, Figure 5)

21 31. The activation link took me to a page that displayed an Advertiser Agreement. (See  
22 Exhibit 3, Figure 5)

23 32. At the bottom of the Advertiser Agreement there was a form to fill out before I could  
24 continue. The form required entry of my legal name. There was a notice below this  
25 with the following text: "Typing Your Legal Name Is Your Electronic Signature  
26 Indicating Your Acceptance And Agreement To The Terms And Conditions. If You

Are Not The Person Named Above, Please Give Us A Call At 1-800-776-7786 (US) Or 0808-234-5996 (UK Freephone).” Below this notice was the option to upload a digital copy of photo identification. The method used to upload a copy of my ID was the same as it was on previous sites to upload a photo for an escort advertisement. I simply had to have a digital copy of my ID on my computer, for example a picture of my driver’s license, and could use the Browse button to navigate to it, upload it, and submit it. This part was optional. I clicked on the question mark next to the word Optional. (See Exhibit 3, Figure 7)

33. Clicking on the question mark opened a new browser window with the answer to a frequently asked question of "Do I have to give you my ID?" The site required an ID “whenever the entertainer's age was brought into question” or “whenever the stated age on the advertisement was under 22.” (See Exhibit 3, Figure 8)

34. I continued through the process of attempting to place an advertisement on this site. However, I was not able to follow through with the process. ErosAds required photos that were submitted to be approved before use. (See Exhibit 3, Figure 9)

35. In fact, I received an email from a customer service representative on the account I used to register to place an advertisement on the site. The email was sent at 10:04 a.m., 21 hours after I had initially attempted to create an advertisement. The email stated that they had reviewed my account and determined that they needed a color copy of my ID or passport in order to verify my legal name before I could post an advertisement. They needed this information before any advertisement could be placed online. The ID had to be valid (not expired) and had to be in color. (See Exhibit 3, Figure 10)

36. I replied to the email to tell them that I did not have a scanner and asked if I could just take a picture of my ID and send it to them. My email was answered within 25 minutes by a customer service representative identified as Sakinah. The representative

1 responded that I was more than welcome to submit the ID using my camera phone or a  
2 digital camera. (See Exhibit 3, Figure 11)

3 37. I called the 1-800-776-7786 which was listed in each email communication from Eros  
4 Guide while I was waiting for the email response. My call was answered by a customer  
5 service representative who identified himself as Santiago. I told him I was calling  
6 because I didn't have a scanner and I wanted to know if they would accept a photo  
7 taken with my cell phone. Santiago told me that was actually the most common way  
8 that photos of identification were submitted. In fact, as long as they could read all of  
9 the details on the identification, it did not matter what method I used to create a digital  
10 copy.

11 **www.backpage.com**

12 38. On June 20, 2012 I visited www.backpage.com. I clicked on the words "post an ad" at  
13 the top right area of the page. (See Exhibit 4, Figure 1)

14 39. There were two choices given to post an advertisement: one could either post an  
15 advertisement locally or in multiple cities. I selected the "post local ads" option. (See  
16 Exhibit 4, Figure 2)

17 40. The next page contained a list of cities in which I could post the advertisement. I  
18 located Seattle, WA and clicked it. (See Exhibit 4, Figure 3)

19 41. I selected Adult Entertainment as the section for my advertisement. (See Exhibit 5,  
20 Figure 4)

21 42. Within the Adult Entertainment section, I selected Escorts for the category. (See  
22 Exhibit 6, Figure 5)

23 43. The next page displayed the first step in what appeared to be a four step process to post  
24 an advertisement. The first step required me to select a city in Washington State. I  
25 selected Seattle. (See Exhibit 4, Figure 6)

26 44. I was then shown a list of "Posting Rules" followed by a Continue button. I clicked the

1 Continue button. (See Exhibit 4, Figure 7)

2 45. The following page contained a template which I was required to fill in, in order to post  
3 my advertisement. The template contained a number of required fields which were  
4 highlighted in yellow ("Title," "Description," "Age" and email address). There was  
5 also a field for "Location." I entered my advertisement title, my age, my advertisement  
6 description, and my email address. (See Exhibit 4, Figure 8)

7 46. I scrolled down the page to continue writing the advertisement. The default selection  
8 for email inquiries was to hide my email address from readers and forward email  
9 inquiries directly to me. There was also a default selection set to display links to my  
10 other postings in the adult entertainment section. As part of the posting process, I was  
11 provided with a template to upload photographs for the advertisement. These could be  
12 uploaded in jpg., gif. or png. formats from my computer. There were spaces on the  
13 template for up to eight photographs. I uploaded the picture of candy that I had used  
14 for advertisements on other sites (described above) by clicking the browse button and  
15 locating the photograph of the candy on my computer desktop. (See Exhibit 4, Figure  
16 9)

17 47. The template page gave me the options of automatically reposting the advertisement on  
18 a prescribed basis (i.e. every 3 days for a specific period of time) or specially  
19 "sponsor(ing)" or highlighting the advertisements with "thumbnail" posts on the right  
20 side of the escorts category. I did not select the recommended upgrades to  
21 automatically repost the advertisement or to sponsor it. I clicked the Continue button.  
22 (See Exhibit 4, Figure 10)

23 48. I was then allowed to preview my advertisement to make sure I didn't want to edit it.  
24 After previewing it, I clicked the Place Ad Now button. (See Exhibit 4, Figure 11)

25 49. After I pressed the "Place Ad Now" button, an "Age Verification" page was displayed.  
26 The page stated that since I was posting an ad for the first time, I was prompted to enter



my first and last name, date of birth, and zip code. Since I had listed my age as 18 when writing the advertisement, I determined what my birth year would need to be in order to be 18 years old now. There was no requirement for uploading a color photocopy of my ID as there had been on [www.erosads.com](http://www.erosads.com). I entered April 26, 1994 as my date of birth and then clicked the continue button. (See Exhibit 4, Figure 12)

50. The next page required me to enter payment information. This is where I stopped the process. (See Exhibit 4, Figure 13)

51. The Backpage advertisement posting process was technologically substantially the same as the process for [www.erosads.com](http://www.erosads.com). The [www.erosads.com](http://www.erosads.com) posting process contained an upload option for a digital identification, i.e. a picture of my driver's license, in situations where I either chose to provide it, or where the website requested it. This process would require that the person posting the advertisement either scan the ID, or take a picture of her photo ID, either with a camera, webcam, or cell phone, and upload it in the same manner in which the person's photograph is uploaded to the website. Backpage could require the same from its advertisers as well.

Technologically, the process is no different from uploading the picture that is already included in the Backpage advertisement.

#### **The Internet Archive**

52. The Internet Archive is a website found at <http://archive.org> that provides access to an online library of archived web sites. The archive includes several components of various websites, such as "texts, audio, moving images, and software as well as archived web pages." (See <http://archive.org/about/about.php>)

53. The primary feature of the Internet Archive site is a feature known as the "Wayback Machine." The Wayback Machine allows visitors of the site to search the Internet Archive to see if a web page is included in the archive, and if so, view the archived version of it. (See <http://archive.org/about/faqs.php>)

- 1 54. A web crawler program is used to automatically browse the Internet and create a copy  
2 of web pages to be stored in the Internet Archive. The Internet Archive only collects  
3 publicly accessible Web pages and excludes pages tagged for “robot exclusion” by their  
4 owners. A site owner can also request removal of a Web site. (See  
5 <http://archive.org/about/faqs.php#23>)
- 6 55. Web site owners can prevent a web crawler from archiving their Web site through the  
7 use of a robots.txt file. This is known as the Robots Exclusion Protocol and can be  
8 easily implemented by placing a file named robots.txt in the top level directory of a  
9 Web site. Typically the instructions found in this file prevent web crawlers from  
10 including all or part of a site in an archive. (See  
11 <http://www.robotstxt.org/robotstxt.html>)
- 12 56. “It generally takes 6 months or more (up to 24 months ) for pages to appear in the  
13 Wayback Machine after they are collected, because of delays in transferring material to  
14 long-term storage and indexing.” “In some cases, crawled content from certain projects  
15 can appear in a much shorter timeframe – as little as a few weeks from when it was  
16 crawled.” “There is no access to files before they appear in the Wayback Machine.”  
17 (See <http://archive.org/about/faqs.php#103>)
- 18 57. The Internet Archive will remove certain content or disable access to content that  
19 appears to infringe the copyright or other intellectual property rights of others if the  
20 content is reported to The Internet Archive Copyright Agent. (See  
21 <http://archive.org/about/faqs.php#20>)
- 22 58. The Internet Archive’s Terms of Use specifically state that access to their archives is  
23 “granted for scholarship and research purposes only” and “you certify that your use of  
24 any part of the Archive’s Collections will be noncommercial.” The terms also include a  
25 statement that “some of the content available through the Archive may be governed by  
26 local, national, and/or international laws and regulations, and your use of such content

1 is solely at your own risk.” Internet Archive users are instructed to refrain from acting  
 2 in any way that might be harmful to minors, including transmitting or facilitating the  
 3 transmission of child pornography.” The Internet Archive may report this type of  
 4 content to the authorities if it is discovered in the Archive. (See  
 5 <http://archive.org/about/terms.php>)

#### 6 **Viewing Advertisements Through the Internet Archive (Wayback Machine)**

##### 7 **www.escortdater.com**

8 59. On July 6, 2012, I went to the Internet Archive website (archive.org) and typed  
 9 “www.escortdater.com” into the Wayback Machine search box and clicked the “Take  
 10 Me Back” button. (See Exhibit 5, Figure 1)

11 60. The next page showed a full-page overlay window. I knew that the archived webpage  
 12 was inaccessible because a page requiring the user to verify his age should have been  
 13 visible. I could not see or click the verification button to verify that I was over 18.  
 14 Although I could see a list of cities behind the overlay, I could not click on them. (See  
 15 Exhibit 5, Figure 2)

16 61. The live version of escortdater.com includes an overlay notification requiring the user  
 17 to click a button to indicate he is 18 years or older. (See Exhibit 1, Figure 1)

##### 18 **www.myproviderguide.com**

19 62. On July 6, 2012, I went to the Internet Archive website (archive.org) and typed  
 20 “myproviderguide.com” into the Wayback Machine search box and clicked the “Take  
 21 Me Back” button. (See Exhibit 5, Figure 3)

22 63. The next page showed a calendar of the dates that the Internet Archive had a  
 23 “snapshot.” The most recent date for which the Internet Archive had a “snapshot” was  
 24 July 5, 2011 and the archived dates ranged from January 27, 2009 to July 5, 2011. (See  
 25 Exhibit 5, Figure 4).

26 64. I clicked on July 2, 2011 and I was taken to a “snapshot” of myproviderguide.com

1 from July 5, 2011. This “snapshot” was a partial capture: the city-navigation bar on the  
2 left was incomplete. (See Exhibit 5, Figure 5)

3 65. Although the city list was incomplete, I found “Seattle” by hovering the mouse pointer  
4 over the city names. (See Exhibit 5, Figure 6)

5 66. I clicked on “Seattle” and I was taken to a page with a list of advertisements. Many of  
6 the pictures on this list were not archived. (See Exhibit 5, Figure 7)

7 67. Then, I clicked on an advertisement that was originally posted on December 25, 2010.  
8 A banner appeared at the top of the next page stating “The Wayback Machine hasn’t  
9 archived a capture for that URL. Here’s a capture taken 0 minutes ago from the live  
10 web that will become part of the permanent archive in the next few months.” This  
11 advertisement was not part of the archive and was only available because it was still on  
12 myproviderguide’s website. (See Exhibit 5, Figure 8)

13 **www.erosads.com**

14 68. I entered “eros-guide.com” into the Wayback Machine search box. The next page  
15 showed a calendar containing the dates that have been archived. The archived  
16 “snapshots” range from December 12, 1998 to July 10, 2011. (Exhibit 5, Figure 9)

17 69. I clicked on July 10, 2011 and the archived page from July 10, 2011 appeared. (See  
18 Exhibit 5, Figure 10).

19 70. Then, I clicked on “Seattle.” (See Exhibit 5, Figure 11)

20 71. Next, the Eros Guide page for Seattle appeared and I clicked on “All Female Escorts.”  
21 (See Exhibit 5, Figure 12)

22 72. Instead of going to a full archive of the webpage, the “robot” message appeared and I  
23 was not able to view any advertisements. At the margin, I could see a hyperlink, which  
24 I clicked. (See Exhibit 5, Figure 13)

25 73. The hyperlink took me to the live version of [www.eros-seattle.com/robots.txt](http://www.eros-seattle.com/robots.txt). The file  
26 contained instructions that prevented the Internet Archive from saving the page. (See

Exhibit 5, Figure 14)

**www.backpage.com**

74. I entered “backpage.com” into the Wayback Machine search box. The calendar depicting the dates that Backpage.com had been captured appeared next. I clicked on July 21, 2011(See Exhibit 5, Figure 15).

75. The next page showed a list of all the places where people had posted advertisements. I clicked on “Washington.” (See Exhibit 5, Figure 16)

76. Then, the categories of advertisements appeared. I clicked on “escorts.” (See Exhibit 5, Figure 17)

77. The disclaimer appeared. I continued by clicking on “I agree.” (See Exhibit 5, Figure 18)

78. The next page showed a list of advertisements from June 21, 2011. I clicked on the advertisement at the top of the list. (See Exhibit 5, Figure 19)

79. A banner appeared at the top of the advertisement stating “The Wayback Machine hasn’t archived a capture for that URL. Here’s a capture taken 0 minutes ago from the live web that will become part of the permanent archive in the next few months.” This advertisement was posted on June 21, 2011. There was a phone number listed in the advertisement. (See Exhibit 5, Figure 20)

80. I tried to find the live version of this advertisement on the normal Backpage.com website, but I was unable to find the advertisement. In fact, I could not find any 2011 advertisements on Backpage.com. I tried calling the number in the advertisement to see if it was possible to still contact the escort based on the archived advertisement. I immediately heard a message stating that the customer had not set up a voice mail box and the call was disconnected.

81. Then, I clicked on “click here” to reply to the advertisement and a page appeared that stated “Page cannot be crawled or displayed due to robots.txt.” Below, a hyperlink

1 appeared ("posting.washington.backpage.com/robots.txt"). (See Exhibit 5, Figure 21)

2 82. Next, I clicked on the hyperlink and I was able to view the robots.txt file that included  
3 directions to stop web crawlers from archiving the page. (See Exhibit 5, Figure 22)

4 83. I started over and, after I entered "backpage.com" into the search box for the Wayback  
5 Machine, the calendar of web "snapshots" appeared. At the top, I clicked on the 2010  
6 calendar. Once at the 2010 calendar, I clicked on July 11, 2010. (See Exhibit 5, Figure  
7 23)

8 84. The next page contained a list of all the available "metro areas." I clicked on "seattle,  
9 wa." (See Exhibit 5, Figure 24)

10 85. Then, the list of advertisement categories appeared. I clicked on "escorts." (Exhibit 5,  
11 Figure 25)

12 86. The user agreement appeared, so I clicked "I agree." (Exhibit 5, Figure 26)

13 87. Then, a list of advertisements for July 23, 2010 appeared. I clicked on the  
14 advertisement at the top of the page. (Exhibit 5, Figure 27)

15 88. The archived advertisement that appeared was originally posted on August 28, 2010.  
16 The advertisement contained pictures and a phone number. (Exhibit 5, Figure 28)

17 89. I clicked on "click here" to reply to the advertisement and the next page stated "Hrm.  
18 Wayback Machine doesn't have that page archived. It doesn't seem to be available on  
19 the live web, either. Want to search for all archived pages under

20 <http://seattle.backpage.com/FemaleEscorts/classifieds/>?" (Exhibit 5, Figure 29)

21 90. I went back to the list of advertisements from July 23, 2010. I clicked on the  
22 advertisement that was second from the top. (Exhibit 5, Figure 30)

23 91. At the top of the next page was text reading, "The requested ad could not be found or  
24 was recently deleted." The page then listed some "Recent escort ads." (Exhibit 5,  
25 Figure 31).

26 92. I was unable to view any current escort advertisements through the Internet Archive.

1 Any advertisements that I was able to find in the Internet Archive appeared to be  
2 outdated and the normal path that a user would follow to respond to the advertisements  
3 was broken due to incomplete archiving.  
4

5 DATED this 9<sup>th</sup> day of July, 2012, at Seattle, Washington.

6 ROBERT M. MCKENNA  
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